and patented in a foreign country, may show actual date of his application in such country to prove the actual date of the invention, so as to avoid an alleged use in this country by an infringer before the date of the foreign patent.

This decision is in conformity with that of Judge Townsend in *Hanifen* v. *Price*, 96 Fed. 435, and that of Judge Dallas in *Hanifen* v. *Godshalk*, 78 Fed. 811. In *Hanifen* v. *Price*, this point was considered as new and the present case is the first affirmation we have seen of the principles in that case. See 9 YALE LAW JOURNAL 101.

SALES—CONTRACT—INSURANCE—OPTION TO RESELL—TITLE.—STOWELL ET AL. v. CLARK ET AL., 62 N. Y. Sup. 155.—Action on a policy of insurance, conditioned to be void if the interest of the insured in the property was other than sole and unconditional. Plaintiffs had purchased the machinery covered by such policy, with an option after a certain time to return it, and receive back the money paid or to pay the balance and keep it. *Held*, that plaintiffs were entitled to collect the insurance on the property destroyed, as under the contract they took an absolute title.

A purchase with right of return passes title and risk immediately to the vendee, and leaves the vendor obliged to rebuy at the vendee's option; this is the prevailing American rule. *Martin* v. *Adams*, 104 Mass. 262; *McKinney* v. *Bradlee*, 117 Mass. 321. But some cases hold that such a conditional sale is only a bailment till the time limit has expired. This is the English rule and conflicts with American rule generally. *Elphick* v. *Barnes*, 5 C. P. D. 321; *Carter* v. *Wallace*, 35 Hunn (N. Y.) 189.

SALE OF HORSE—WARRANTY—BREACH—DAMAGES—BRUCE v. FISS, DOERR & CARROLL HORSE CO., 62 N. Y. Supp. 96.—A horse was bought under a false warranty that he was a good carriage horse. *Held*, that the purchaser can recover damages for an injury caused by an attempt to use it for that particular purpose. *Randall* v. *Newson*, 2 Q. B. Div. 102; *Jones* v. *George*, 61 Tex. 345.

Contrary to this well established rule, *Schurmeier* v. *English*, 46 Minn. 306, held that the purchaser of a warranted wagon could not recover for damages done to a horse drawing it.

SET-OFF—CLAIMS PURCHASED BY DEFENDANT AFTER SUIT BROUGHT—WELLS v. OVERBY, 54 S. W. 955 (Ky.).—*Held*, that claims against plaintiff purchased after suit brought are a proper subject of set-off.

This decision is contrary to the great weight of authority, the general rule being that a claim is not a proper subject of set-off unless it existed in favor of the defendant at the time action is brought. 22 *Am. Eng. Enc. of Law* 274.

SHIPPING—DAMAGES TO CARGO—SEAWORTHINESS—FARR & BAILEY MFG. CO. v. INTERNATIONAL NAV. CO., 98 Fed. 636.—A ship started on a voyage with one porthole insecurely fastened, which became open so that water entered and damaged cargo. *Held*, she was unseaworthy, because not in a fit condition. Gray, J., dissents.

This case was distinguished from *The Silvia*, 171 U. S. 462, where the iron ports being left open purposely to admit light, the glass ports were broken and damage done by water entering. Damage was here held to be due to fault in management, from which the owners of a ship are exempt, by the Harter Act, exempting the owners from any damage resulting from any fault or error in the navigation or in the management of the vessel.

This seems a very close distinction and one not entirely warranted by the authorities. We are inclined to follow the view of Judge Gray, who, in his dissenting opinion, cites the case of *Hedley* v. *Steamship Co.* 1894, *App. Cases*